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Audit of Design and Delivery of the Labour Standards Program *(Canada Labour Code Part III)*

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Internal Audit Services Branch

Canada

Audit of Design and Delivery of Labour Standards Program (Canada Labour Code Part III)

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1. Background

1.1 Context

The Labour Program contributes to social and economic well-being by fostering safe, healthy, fair, and inclusive work environments and cooperative workplace relations in the federal jurisdiction. The Labour Standards (LS) program supports that strategic objective by setting minimum standards for federally regulated employers and employees to follow.

The LS program's key enabling legislation is the *Canada Labour Code Part III*, which sets out minimum standards. These standards include hours of work, vacation and general holidays, leave, termination, layoff or dismissal, wages, pay and deductions, sexual harassment and employer compliance. Federally regulated businesses and industries under the Code include: many First Nations activities; interprovincial and international air, rail, and marine transportation; marine shipping, ferry and ports services; telecommunications and broadcasting; banking; and grain elevators, feed and seed mills.

LS program activities are carried out by two organizational entities under the Compliance, Operations, and Program Development (COPD): the Workplace Directorate (WD) and the Regional Operations and Compliance (ROC) Directorate. Functional direction is provided from headquarters to five regional offices (North West Pacific, Central, Ontario, Quebec, and Atlantic).

The LS program uses the term "assignment" as the service or response executed by a Labour Affairs Officer (LAO) over a period of time to achieve resolution of a LS complaint, determine jurisdiction analysis, conduct a LS awareness session or other LS activities. In fiscal year 2016-17, the LS program finalized over 5,300 assignments across all regions, including 2,075 monetary complaint assignments; 1,282 unjust dismissal assignments; and 470 proactive assignments.

1.2 Audit Objective

The objective of this audit was to provide assurance that the Labour Standards program is designed to enforce *the Canada Labour Code Part III*, and that the service delivery model is consistently implemented across the program.

1.3 Scope

The scope covered fiscal years 2015-16 and 2016-17. The audit assessed program activities performed in the National Headquarters (NHQ) as well as in five regional offices.

1.4 Methodology

A number of methodologies were used including: interviews, documentation review, and file sampling of assignments performed by LAOs.

Representatives from WD and ROC were interviewed to provide a comprehensive view of practices in policy setting as well as the operational environment.

A file sample comprised of 310 randomly selected assignments was reviewed in the regions visited. The types of assignments reviewed included: Investigations – monetary and non-monetary; Jurisdiction investigations; Information to clients; Unjust dismissals; Appeals; Inspections – general and targeted; Alternative dispute resolution; and Bankruptcy and insolvency.

2. Audit Findings

2.1 Existing governance structure could be strengthened

The audit found that internal steering committees exist for LS, such as the Branch Executive Committee and Regional Operations and Compliance Executive Committee. While agendas and records of decisions from 2015-16 and 2016-17 internal committee meetings show that 44% of meetings mention LS topics, minutes revealed that the majority of discussion topics were focused on the Occupational Health and Safety program. Any discussion of the LS program revolved around operations and did not include priority setting, strategic outcomes or monitoring of results.

Currently there are no external committees in place with a mandate to engage clients and stakeholders on LS activities to ensure that the emerging trends in the labour market are reflected in the LS program design.

There is a risk that the lack of strategic direction and stakeholder engagement for the LS program may hinder the program's ability to respond quickly to both immediate and future opportunities and risks.

Recommendation

1. COPD should clarify existing committees' roles and structure in the formulation and adoption of the LS program's strategic direction and ensure that LS priority setting, strategic outcomes and monitoring of results are discussed at committee meetings.

Management Response

Management agrees that COPD should clarify roles and structure of committees in the formulation and adoption of the strategic direction for labour standards.

COPD has established measurable indicators through its development of a Performance Information Profile for labour standards and will actively use committees to monitor results and ensure that future priority setting is focused on strategic outcomes.

COPD will build on its engagement with individual stakeholder groups and broader policy views gained through public consultations to create a forum for stakeholder engagement modeled on the Occupational Health and Safety Advisory Committee. Actions are expected to be completed by September 2018.

2.2 Strategic plans lack both granularity in objective-setting and integration into operational plans for Labour Standards

While the national strategic plan developed by WD outlines high-level LS objectives, the plan defines neither the activities that will be undertaken to achieve these objectives nor the time-bound measures by which such achievement will be assessed against.

The audit also noted that the national strategic plan, operational plan and in some cases, additional regional specific plans are not aligned with each other. Furthermore, the objectives and activities required to achieve them, which were outlined in these plans, were not integrated.

Taking into account these issues, it may be difficult to measure whether the program has achieved the desired high-level objectives.

Recommendation

2. COPD should establish measureable objectives for LS in its strategic plan to ensure there is alignment and integration of the objectives and the activities required to achieve them.

Management Response

Management agrees that COPD should establish more measurable objectives for LS and enhance its planning activities. ROC and WD will work together to develop an integrated planning framework, which will ensure that the various existing planning activities including the Strategic Operational Plan and Regional plans, are aligned.

The Program will also look at ways of including more external engagement activities into its annual plans and leveraging existing information, including federal jurisdiction survey information, to improve and strengthen its outcomes. Actions are expected to be completed by September 2018.

2.3 Processes to respond to legislative amendments are in place and working

The audit found that current processes allow for legislative amendments to be implemented swiftly as soon as they come into effect through a series of communications including guidance documents and information sessions, however these processes are not formally documented.

LAOs are informed of any legislative changes as soon as they come into effect. Guidance on how to implement changes is communicated through Operations Program Directives (OPD). Further clarification can be requested through technical advisors and later, escalated to program advisors as required. This process allows for the implementation of the Code and any subsequent legislative amendments as soon as they come into effect.

2.4 Both quality control and quality assurance processes are missing

The audit revealed that neither a national quality control for the program nor a quality assurance process for regional fieldwork exist. While monitoring of assignments completed in the field is part of the technical advisors' functions, results of our file reviews indicate this is not occurring.

Without a quality control process, it is difficult to assess whether key program activities are effective and carried out in a consistent manner. This makes it challenging to identify where modifications/improvements are required for the LS program.

Recommendation

3. COPD should develop a program-wide quality control, including a quality assurance process and indicators to measure the on-going effectiveness of key LS processes.

Management Response

Management agrees with the recommendation and recognizes the need to develop and implement a Quality Management Framework. As noted in the audit, there currently is no national quality management

program or process in place. There is however, a review and appeals process in place which can mitigate quality issues.

As a result, the Program will develop a national Quality Management Framework that will include clear indicators and activities to review files throughout its lifecycle, including appeals. The implementation of a continuous improvement cycle will be critical to ensuring that a robust integrated Quality Management Framework exists within the Labour Program. Actions are expected to be completed by December 2018.

2.5 Directives developed to support enforcement of the Code do not reflect field work requirements

Documentation review revealed that 7 out of 15 OPDs used in the completion of assignments are in a draft format. In some cases, no OPDs exist. There are currently no timelines to finalize the draft OPDs or develop the missing OPDs.

Furthermore, while the program identified amendments to processes and guidelines necessary for the upcoming legislative changes, the proposed timelines for their development do not take into account the work that is still outstanding for previous legislative changes (e.g. 2012-14).

OPDs are not reviewed for obsolescence/relevance to the field work. OPDs are only updated/developed when there are legislative amendments/legal decisions. Regions have filled any gaps with locally developed processes.

PROTECTED

Recommendation

4. COPD should implement a streamlined process for the development/update of OPDs to ensure their timeliness, relevance, consistency and validity.

Management Response

Management agrees that methods to provide and update guidance to regions could be improved to ensure relevancy, consistency and validity.

The Program will undertake a process improvement exercise based on consultations to review the overall structure of guidance documents and procedures, including OPDs, and the process for their development and update, in order to optimize the dissemination of timely and relevant direction to regions.

PROTECTED. Actions are expected to be completed by September 2018.

2.6 Plans are underway to strengthen existing enforcement methods

Interviews revealed that employers are not compelled to respond to LAOs' requests for information, affecting turnaround time to resolve a complaint. In their views, this may be due, to a certain extent, to the lack of penalties enforced by the Code and the cost-benefit of pursuing prosecutions.

Documentation review revealed that, in 2015-16, 51% of ordered payments were collected through voluntary compliance, while 26% were collected through enforcement mechanisms and 23% remained outstanding in the system.

PROTECTED

2.7 Service delivery standards are neither formalized nor communicated

Documentation review revealed that certain service standards are referenced in the national strategic plan and LAO's performance agreements (i.e. national time standards and client service standards). However the complete list of service standards is not formally defined nor communicated.

Interviews revealed that the lack of internal operational-level agreements hinders the achievement of defined service delivery standards (e.g. 180 days for unjust dismissal and monetary complaints).

There is a risk that the lack of operational-level agreements, combined with a limited definition and communication of service standards may impact service delivery by increasing response time to addressing complaints.

Recommendation

5. COPD should develop comprehensive service delivery standards to formalize activities and interactions both internally as well as externally, with clients and stakeholders.

Management Response

Management agrees with the recommendation and will develop a suite of comprehensive service delivery standards for high volume/priority activities and interactions with clients and stakeholders to standardize service delivery across the country. These service standards will establish benchmarks for interactions between Labour Program officials and clients to ensure systematic follow-ups to better respond to issues or concerns of clients. Actions are expected to be completed by March 2019.

2.8 Mechanisms to collect training requirements require strengthening

Current training is designed to provide basic knowledge and skills to new inspectors and is supported by coaching to gain operational experience.

Interviews revealed that training provided was too narrow and focused only on the application of the Code. There is an opportunity to include more judgement-based approach content that would enrich officers to face the complexity of assignments found on-the-job.

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There are currently no certification process and refresher courses.

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Recommendation

6. COPD should review its training strategies to ensure officers are equipped to deal with complex job assignments.

Management Response

Management agrees that LAOs, throughout their learning and development need to become increasingly equipped to handle all forms of assignments, from the simpler to the more challenging.

In order to maintain relevancy in instructional design, content and delivery approaches, the basic Part III learning program, delivered through eLearning and in-class sessions, has recently been modernized PROTECTED.

The Branch will expand its training program to offer enhanced skill based learning for all officers. This training is expected to be available for fiscal year 2020 to assist officers PROTECTED. Actions are expected to be completed by March 2020.

3. Conclusion

Overall, the audit concluded that the LS program is designed to enforce *the Canada Labour Code Part III*. However some elements of the design are either missing such as quality control or require strengthening such as governance and planning.

As well, the audit concluded that the service delivery model is not consistently implemented across the program. PROTECTED

4. Statement of Assurance

In our professional judgement, sufficient and appropriate audit procedures were performed and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions were based on observations and analyses at the time of our audit. The conclusions are applicable only for program activities conducted to manage provisions of the *Canada Labour Code, Part III*. The evidence was gathered in accordance with the Treasury Board *Policy on Internal Audit and the International Standards for the Professional Practice of Internal Auditing*.

Appendix A: Audit Criteria Assessment

Audit Criteria	Rating
Program is designed to enforce the Code	
A governance structure including oversight and accountabilities is clearly defined to ensure effective management of the Program.	◐
An integrated planning framework is in place to ensure that strategic objectives are communicated, national and regional operational plans are aligned, and key performance indicators are defined.	◐
Legislative changes are being implemented in a timely manner to transform the Program's core business to respond to the Code enforcement requirements.	●
Directives and guidelines are defined, comprehensive and reviewed regularly to ensure continued applicability.	◐
Processes, tools, training and management practices including quality control are adequate to enforce the provisions of the Code.	◐
Information generated by systems is accurate, consistent and allows for management of risks and planning of activities.	◐
Program Service Delivery Model is consistent across the Program	
Enforcement tools and procedures (complaints awareness-raising, settlements, legally-binding directions, and prosecutions) are in place to implement the provisions of the Code.	●
Nationally established directives and guidelines are consistently applied by regional personnel.	◐
Oversight and monitoring processes including quality control are working as intended.	◐
Service delivery standards are in place and communicated to appropriate parties.	◐
Feedback mechanisms exist and information provided by clients, partners, and stakeholders is used to inform planning, risk management, and to identify potential program enhancements.	◐

- ✪ Best practice
- ● Sufficiently controlled, low risk exposure
- ◐ Controlled, but should be strengthened, medium risk exposure
- ○ Missing key controls, high risk exposure

Appendix B: Glossary

COPD	Compliance, Operations, and Program Development
LAO	Labour Affairs Officer
LS	Labour Standards
NHQ	National Headquarters
OPD	Operations Program Directives
ROC	Regional Operations and Compliance
WD	Workplace Directorate